

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH
AT JAIPUR.

ORDER

Phool Chand Vs. State
SB CRIMINAL MISC. PETITION NO.1173/2002
UNDER SECTION 482 CR.P.C.

Date of Order 27.10.2006.

PRESENT

HON'BLE MR.JUSTICE HARBANS LAL

Mr. D.V. Tholia for the petitioner.
Mr. Arun Sharma PP for the State.

BY THE COURT:-

This petition under Section 482 Cr.P.C. is directed against the order dated 12.9.2002 passed by the learned Addl. Sessions Judge, Jhunjhunu in Criminal Revision No.87/2002 (147/2001) whereby the revision petition has been dismissed and the order dated 20.11.2001 passed by the learned Addl. Chief Judicial Magistrate, Jhunjhunu in Criminal Case No.622/2001 taking cognizance for the offence under Sections 447, 323 and 354 IPC against the petitioner has been up-held.

Briefly stated, the relevant facts are that complainant Kashi Ram lodged an first information report at PS Mandawa with the allegations that petitioner Phool Chand came to his field. He abused his sister Mamta and out-raged her modesty. When she cried for help, Guljari Lal Master, his wife and son Deen Dayal came there. After investigation, negative final report was submitted. The complainant filed a protest petition where-upon the statements of Mamta, Kashi Ram and Smt. Shaira were recorded under Section 200/202 Cr.P.C. and injury report of Mst. Mamta was

also filed. The trial court took cognizance against petitioner Phool Chand and Guljari Lal Master for the aforesaid offences. Aggrieved by the said order, the petitioner filed a revision petition which was dismissed as indicated above. Hence, this petition.

Learned counsel for the petitioner has contended that while passing the order taking cognizance, learned court below has not considered the police statements and other materials collected during investigation. He has submitted that the independent witnesses examined by the police have all negatived the occurrence having taken place. Learned PP has supported the impugned order as well as the order of the learned trial court.

I have considered the submissions made at the bar and have perused the order of the learned trial court as well as that of the revisional court and other materials placed before me.

This petition under Section 482 Cr.P.C. tantamounts to second revision and appears to have been filed to circumvent the bar on filing of second revision provided under Section 397(3) Cr.P.C. which is not permissible under the law. This petition, therefore, is obviously not entertainable.

This apart, from a perusal of the statements of Mamta, Kashiram and Smt. Shaira the alleged offences prima facie make out a case for proceeding further in the matter. It cannot be said that there is any abuse of the process of the court or it is otherwise essential to exercise inherent powers of this court under Section 482 Cr.P.C. to secure the ends of justice.

It is well settled that the inherent powers of this court under Section 482 Cr.P.C. are to be exercised very sparingly and with circumspection to prevent the abuse of the process of the court or to secure the ends of justice. But no such case having been made out, this petition is not found fit for admission.

The contention of the learned counsel for the petitioner that the learned trial court and the revisional court have not considered the statements recorded under Section 161 Cr.P.C. and other materials collected during the investigation cannot be looked into because this contention does not seem to have been raised before the revisional court.

In view of the statements on oath recorded under Sections 200 and 202 Cr.P.C., it cannot be concluded at this stage that the allegations against the petitioners are false or groundless. The fact that a cross case has been lodged by the petitioner is no valid ground to quash the order of the trial court taking cognizance against the petitioner as confirmed by the revisional court.

Consequently, this petition under Section 482 Cr.P.C. is hereby dismissed.

(HARBANS LAL)J.